80-1578

No.

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ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

DANIEL W. GLUESENKAMP,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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APPENDIX A

SUPREME COURT OF FLORIDA

Case Nos. 57,124, 56,928 & 57,131

DANIEL W. GLUESENKAMP, Appellant,

vs.

STATE OF FLORIDA, Appellee.

HUBERT DWIGHT MASSENGALE, et al., Appellants,

vs.

STATE OF FLORIDA, Appellee.

JOSEPH FRANCIS MOUW, et al., Appellants,

vs.

STATE OF FLORIDA, Appellee.

[October 16, 1980]

BOYD, J.

These consolidated cases are before the Court on appeal from judgments rendered by

the Circuit Court of the Third Judicial Circuit, in and for Hamilton County. In rendering the judgments the circuit court passed upon the consitutionality of section 570.15, Florida Statutes (1977) and (Supp. 1978). Therefore, we have jurisdiction of the appeals. Art. V, § 3(b) (1), Fla. Const.

In case no. 57,124, Dan W. Gluesenkamp was charged in a two-count information with possession of cannabis in excess of one hundred pounds with intent to sell and possession of cannabis in excess of five grams, both being offenses prohibited by section 893.13, Florida Statutes (1977). After pleading not guilty, the appellant moved to dismiss the information and to suppress evidence. Thereby he challenged both the constitutionality of section 570.15, Florida Statutes (1977), and the legality of the search performed after a

highway stop executed pursuant to that statute. After the court denied his motions to dismiss and to suppress evidence, the appellant changed his plea to nolo contendere, specifically reserving the right to appeal these two rulings. The court then adjudicated him guilty and imposed sentence.

In case no. 56,928, Hubert Dwight Massengale and Mason Gregory Kring were jointly charged in a two-count information with possession of cannabis in excess of one hundred pounds with intent to sell and possession of cannabis in excess of five grams. After pleading not guilty, the appellants moved to suppress evidence. In their motion they challenged the constitutionality of section 570.15, Florida Statutes (Supp. 1978) and questioned the legality of a search performed after they were stopped on the highway pursuant to

that section. The court denied the motion and the appellants entered a plea of nolo contendere, specifically reserving the right to appeal the court's ruling on the motion. The court adjudicated the appellants guilty on both counts and sentenced them.

In case no 57,131, Joseph Franics Mouw and Paul Marion Hartwig were jointly charged in a two-count information with possession of cannabis in excess of one hundred pounds with intent to sell and possession of cannabis in excess of five grams. After pleading not guilty the appellants moved to suppress evidence. The motion challenged the constitutionality of section 570.15, Florida Statutes (Supp. 1978) and questioned the legality of a search performed after they were stopped on the highway pursuant to that section. The court denied the motion and the appellants

entered a plea of nolo contendere, specifically reserving the right to appeal the court's ruling on the motion. The court then adjudicated the appellants guilty on both counts and sentenced them.

In case no. 57,124, appellant Gluesenkamp and Debra Cain were traveling in the appellant's van on January 15, 1978. With Ms. Cain at the wheel, they passed an agricultural inspection station without stopping. A Department of Agriculture inspection officer gave chase and pulled the van over. Cain got out of the vehicle to talk to the officer while the appellant drew together the curtain that separated the front seat from the cargo area of the van. Cain told the inspector they were hauling plants. The inspector asked to see the documents pertaining to the cargo of plants. Cain then went to the van, talked to the appellant, and returned to say that

that they were hauling potting soil. The inspection officer asked to look in the van and the appellant refused. The inspector then required Gluesenkamp and Cain to return in the van to the inspection station.

At the inspection station the appellant again refused to allow the inspector to look inside the van. The inspector arrested Cain for passing the station without first stopping for inspection, a misdemeanor proscribed by section 570.15(2), Florida Statutes (1977). The inspector contacted his supervisor and an hour later a deputy sheriff, an assistant state attorney, and an investigator arrived at the inspection station. They looked through the van's windows and saw some burlap-colored bundles which they believed contained cannabis. They appellant surrendered a key to them after they told him they had probable cause for a search, did not need a warrant,

and would break the van open if he refused. They found what they believed to be cannabis and the deputy arrested Gluesenkamp and Cain.

In case No. 56,928, appellants Massengale and Kring were traveling in a van on the night of July 20, 1978, and they proceeded past an agricultural inspection station. An inspection officer went after and stopped them, and asked them to return to the station. The inspector arrested Massengale for failing to stop for inspection in violation of section 570.15(2), Florida Statutes (Supp. 1978), and asked if he could look inside. Kring, the owner of the van, opened the door. The inspector saw several large bundles wrapped in burlap and plastic and smelled cannabis. He summoned a deputy sheriff who confirmed that the bundles contained cannabis and arrested the appellants.

In case no. 57,131, appellants Mouw and Hartwig, on June 18, 1978, passed an agricultural inspection station without stopping, were apprehended, and accompanied an inspection officer back to the station. There appellant Mouw opened the van. The inspector observed a large compartment built into the bed of the vehicle. He saw cannabis seeds on the floor and smelled cannabis. He arrested the appellants for violation of section 570.15, Florida Statutes (Supp. 1978). Then the vehicle was searched pursuant to warrant and over three hundred pounds of cannabis were found in the compartment.

All of the appellants in these consolidated cases challenge the constitutionality of section 570.15, requiring all trucks to stop at agricultural inspection stations, and question the statute's applicability to them on the ground that their vans are not trucks within the meaning of the statute.

Each appellant argues that if the initial apprehensions pursuant to the statute were thus unlawful, the evidence subsequently seized is the fruit of such illegality and the convictions cannot stand.

Section 570.15, Florida Statutes (1977), provides:

> 570.15 Access to places of business and vehicles.--
> (1)(a) The commissioner, assistant commissioner, directors, counsel, experts, chemists, agents, inspectors, road-guard inspection special officers, and other employees and officers of the department shall have full access at all reasonable hours to all:
> 1. Places of business;
> 2. Factories;
> 3. Farm buildings;
> 4. Carriages;
> 5. Railroad cars;
> 6. Trucks;
> 7. Motor vehicles, other than private passenger automobiles with no trailer in tow or any vehicle bearing an RV license tag;
> 8. Truck and motor vehicle trailers;
> 9. Vessels; and
> 10. All records pertaining thereto; used in the production, manufacture, storage, sale, or transportation within

the state of any food product; any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.

(b) If such access be refused by the owner, agent, or manager of such premises or by the driver of such aforesaid vehicle, the inspector or road-guard inspection special officer may apply for a search warrant which shall be obtained as provided by law for the obtaining of search warrants in other cases, or may conduct a search of any of the aforesaid vehicles without a warrant pursuant to s.933.19.

(c) Such departmental officers, employees, and road-guard inspection special officers may examine and open any package or container of any kind containing or believed to contain any article or product which may be transported, manufactured, sold, or exposed for sale in violation of the provisions of this chapter, the rules of the department, or the laws which the department enforces and may inspect the contents thereof and take therefrom samples for analysis.

(2) It shall be unlawful for any truck or any truck or motor vehicle trailer to pass any official road-guard inspection station without first stopping for inspection. A violation of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Subsection (1) of the statute pertains to "access" in the context of the inspection functions of the Department of Agriculture. All of the enumerated places and conveyances to which "access" is provided for by subsection (1)(a), are qualified by the clause, "used in the production, manufacture, storage, sales, or transportation within the state of any food product; or any article or product with respect to which any authority is conferred by law on the department." If a vehicle or place does not come within the meaning of this qualifying clause, then the departmental officials have no right of "access."

Subsection (2) of the statute forbids "any truck or any truck or motor vehicle trailer to pass any official road-guard inspection station without first stopping for inspection." In Stephenson v. Department of Agriculture and Consumer Services, 342 So.2d 60 (Fla. 1976), we held that the

requirement that all trucks stop at inspection stations is a valid exercise of the police power. The appellant argued there that to require his trucks to stop was irrational, since they never carried agricultural products. Thus we have held in effect that the state may require vehicles to stop even though the department may have no right of access to them under the statute. Trucks, truck trailers, and motor vehicle trailers are required to stop in order for the department officials to determine whether they have a right of access, and, if so, whether to exercise it.

The appellants argue that their vans are not trucks within the meaning of section 570.15(2), Florida Statutes (Supp. 1978). "Truck" is not defined in section 570.15 or anywhere in chapter 570. But the Florida Uniform Traffic Control Law defines it as "Any motor vehicle designed, used, or maintained primarily for the transportation of

property." § 316.003, Fla. Stat. (1979); ch. 71-135, § 1, Laws of Fla. Chapter 320 of Florida Statutes, (1977), pertaining to drivers' licenses, defines "truck" as including "any motor vehicle designed or used principally for carrying things other than passengers and includes a motor vehicle to which has ben added a cabinet box, platform, rack, or other equipment for the purpose of carrying merchandise other than the person or effects of the passengers." § 320.01(13), Fla. Stat. (1977). Section 323.01(12), Florida Statutes (1977), in the chapter pertaining to the regulation of motor carriers, provides: "'Truck' includes any self-propelled motor vehicle designed and used principally for carrying things other than passengers."

Some vans are designed or maintained so as to have a cargo area to the rear of the front seats. Such vans, since they are designed specifically for transporting things

rather than passengers, fall within the statutory definition of a truck. Other vans however, do not have such a cargo area. Instead they are designed and maintained with several rows of seats for the sole purpose of carrying passengers, with the remaining space being designed to carry luggage or other personal effects of the passengers. Such vans are frequently used for bus, sightseeing, and shuttle service. And, of course, many of them are in use as ordinary, private, personal or family passenger vehicles. It is the design, maintenance, and actual use of a van-type vehicle that determine whether it is a truck. Vans designed to carry cargo are trucks and are required to stop at agricultural inspection stations. Vans designed as passenger vehicles are not. § 570.15 Fla. Stat. (Supp. 1978); Eden v. State, 370 So.2d 826 (Fla. 1st DCA 1979). This distinction

between cargo vehicles and passenger vehicles is also supported by an analysis of subsection (1) (a) of the statute. In listing the places and vehicles to which department officials are granted access, the statute draws a distiniction between passenger automobiles and other motor vehicles. The seventh enumerated clause of subsection (1)(a) provides for inspection access to:

> Motor vehicles, other than private passenger automobiles with no trailer in tow or any vehicle bearing an RV license tag;

§ 570.15(1)(a)7., Fla. Stat. (1977).[1] We conclude that in each of these cases, the

---

[1]Chapter 75-180, Laws of Florida, amended the seventh enumerated cluase of section 570.15(1)(a), effective June 8, 1978, to read:

> Motor vehicles, except private passenger automobiles with no trailer in tow, travel trailers, camping trailers, and motor homes as defnied in s. 320.01(1)(b);

§ 570.15(1)(a)7., Fla. Stat. (Supp. 1978).

appellants' vans came within the meaning of the word "truck" as used in section 570.15(2) because they were not being used as passenger vehicles as contemplated by the statute. Therefore, they were required to stop.

The appellants also present the closely related argument that section 570.15(2), Florida Statues (Supp. 1978), denies them due process of law under the Florida and United States Constitutions because it is vague. They argue that since it is a penal statute, its vagueness renders it invalid on its face. Since the law is void, the appellants contend, their pursuit and apprehension for violation thereof were unlawful, and the evidence obtained in the course of the events which followed should have been suppressed.

A penal statute must be written in language sufficiently definite, when measured by common understanding and practice, to

apprise ordinary persons of common intelligence of what conduct will render them liable to be prosecuted for its violation. State v. Ashcraft, 378 So.2d 284 (Fla. 1979); Brock v. Hardie, 114 Fla. 670, 154 So. 690 (1934).

As we stated above, section 570.15(1)(a), in providing the conditions for agricultural inspection access, demonstrates a legislative purpose to distinguish between vehicles carrying goods and vehicles carrying passengers. Furthermore, the above-quoted statutory definitions of "truck" in chapters 316, 320, and 323, Florida Statutes (1977), provide authoritative definitions and indicate what is the generally accepted definition of the word "truck".

We conclude that the offense defined in section 570.15(2) is not vaguely expressed by virtue of any indefiniteness of the term "truck". Furthermore, ordinary persons of

common intelligence can conclude from the statute that van-type vehicles that are designed, maintained, or used for the purpose of transporting goods rather than passengers are included in the meaning of the word "truck" as used in section 570.15(2).

Appellant Gluesenkamp argues that section 570.15, Florida Statutes (1977), violates principles of equal protection and equality of treatment under the United States and Florida Constitutions. He contends that the statute establishes a classification among motor vehicles using the highways and that some are required to stop at agricultural inspection stations while others are not. Subsection (2), as we have seen, creates a distinction between trucks, truck trailers, and motor vehicle trailers on the one hand and passenger vehicles on the other. The appellant also points out that at the time of his arrest, section 570.15(1)(a)7. provided for inspection

access to "[m]otor vehicles, other than private passenger automobiles with no trailer in tow or any vehicle bearing an RV license tag; . . . ." Motor vehicles exempted from the requirement of stopping for inspection, the appellant argues, are just as capable of carrying agricultural products within the regulatory jurisdiction of the department as are those vehicles that are reuired to stop. He argues that it is improper to exclude from the inspection requirement vehicles with license tags bearing the recreational vehicle designation, and points to evidence that it is a simple matter to obtain such a tag and to display it on a vehicle used for transporting goods.

As was discussed previously, section 570.15(1)(a) provides for "access" by various department officials to all of the enumerated places and conveyances that are "used" in any phase of the agriculture

industry. The seventh enumerated clause, therefore, provides for access to all "motor vehicles" used in agriculture. Clause 7. also exempts some of these: "private passenger automobiles with no trailer in tow [and] any vehicles bearing an RV license tag." Private passenger automobiles with no trailer in tow and vehicles bearing "RV" license tags are therefore not among the conveyances to which the department is provided access, even when they are actually being used in some phase of the agriculture industry.

In deciding the merits of the appellant's equal protection challenge, the first step is to determine what kind of standard to apply. It might be suggested that the differential treatment provided for by the statute impinges upon the fundamental "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and

seizures. . . ." U.S. Const.. amend. IV; art. I, § 12, Fla. Const. We think, however, that the required stop for inspection is not an unreasonable seizure. Stephenson v. Department of Agriculture and Consumer Services, 342 So.2d 60 (Fla. 1976). And after a vehicle has stopped for inspection, a search may be conducted only under certain circumstances. Section 570.15(1)(b), Florida Statutes (1977), provides:

> If such access be refused by the . . . driver of such aforesaid vehicle, the inspector or road-guard inspection special officer may apply for a search warrant which shall be obtained as provided by law for the obtaiing of search warrants in other cases, or may conduct a search of any of the aforesaid vehicles without a warrant pursuant to s. 933.19.

The fourth amendment rights of users of the highways are protected under the statute. Compare Bagocus v. State, 359 So.2d 885 (Fla. 1st DCA 1978), with Powell v. State, 332 So.2d 105 (Fla. 1st DCA 1976).

Section 570.15 is a regulation of transportation and the use of the highways of the state. It is a valid exercise of the police power in furtherance of the public health and public economic good. Stephenson v. Department of Agriculture and Consumer Services, 342 So.2d 60 (Fla. 1976). It does not impinge upon any fundamental rights.

The test to be applied in determining whether distinctions drawn by statutes such as this one are valid has been stated in innumerable cases, and was recently stated by the United States Court of Appeals for the Fifth Circuit: "In the absence of any suspect classification, invasion of fundamental interests, or invidious intent, all that the United States Constitution demands is that the classifications be rationally related to a legitimate state interest." Jackson v. Marine Exploration Co., 583 F.2d 1336, 1346 (5th Cir. 1978). Under the

Florida Constitution, the same principle applies. Ordinarily, the test is the "rational basis" test. See Landrau v. State, 365 So.2d 695 (Fla. 1978).

Acts of the legislature are presumed valid, and the burden is on the challenger to show that a legislative classification violates principles of equality. A legislative classification will be upheld where the distinction drawn rests on some real and practical basis in relation to the purpose of the legislation. See, e.g., Gammon v. Cobb, 335 So.2d 261 (Fla. 1976); Hunter v. Flowers, 43 So.2d 435 (Fla. 1949); State ex rel. Clarkson v. Phillips, 70 Fla. 340, 70 So. 367 (1915). If a legislative classification has such a reasonable basis, it does not violate equal protection simply because it is not drawn with perfect precision or because in its application some inequality results. Dandridge v. Williams, 397 U.S. 474 (1970); Lewis v. Mathis, 345

So.2d 1066 (Fla. 1977). A regulation of economic matters embodying a classification based on practical convenience need not apply with mathematical uniformity if it has such a rational basis. See, e.g., Sproles v. Binford, 286 U.S. 374 (1932); Continental Baking Co. v. Woodring, 286 U.S. 352 (1932).

Applying the conventional standard, we hold that the distinction drawn by section 570.15 between vehicles designed, maintained, or used for the carriage of property on the one hand and passenger vehicles on the other is reasonably related to the Department of Agriculture's inspection functions and does not violate the equal protection clause of the United States Constitution or the equality guaranty of the Florida Constitution.

As has been recited above, the searches in cases no. 56,928 and no. 57,131, following pursuit and apprehension for violation

of section 570.15(2), were based on consent or a warrant. No issue of the voluntariness of the consent or of the existence of probable cause in either of those cases is before us. Appellant Gluesenkamp, on the other hand, did not consent to the search of his van, and properly preserved for appeal the question of the legality of the search.

Since the agricultural inspector and law enforcement officer were refused access to Gluesenkamp's van and a search warrant was not obtained prior to conducting the search, the issue in this case is whether the search was properly conducted without a warrant pursuant to section 933.19, Florida Statutes (1977). § 570.15(1)(b), Florida Statutes (1977). Section 933.19 expressly adopts the holding of Carroll v. United States, 267 U.S. 132 (1925, as the law of this State. In Carroll the defendants were convicted of transporting liquor in

violation of the National Prohibition Act. The defendants and a companion had met with undercover federal prohibition agents in Grand Rapids. The agents said they were interested in buying some whiskey. The defendants said they would go get it and would be back shortly. They did not return, but their companion did and he explained that they would bring the whiskey the next day, which they never did. Three months later the federal agents saw the defendants in the same car they had the night the agents were supposed to buy whiskey from them. The agents pulled the defendants over and searched their car and found contraband liquor.

The defendants appealed their conviction, claiming their fourth amendment rights to be free from unreasonable search and seizure had been violated. The United States Supreme Court affirmed, holding that automobiles may be searched without a

warrant when "there is known to a competent official, authorized to search, probable cause for believing that [the] vehicles are carrying contraband or illegal merchandise." Id. at 154. Because the agents had stopped the defendants on a highway connecting Grand Rapids and Detroit, a port of entry for illegal liquor, the Court held the agents had probable cause to suspect the defendants were transporting liquor. The Court emphasized that a different standard for searching an automobile than a house was justified because of the automobile's mobility.

While appellant Gluesenkamp does not question that the law enforcement officials had probable cause to enter and search his van, he suggests in his brief that the officials' actions in looking into his van from the outside constituted a search and that this preliminary search was not supported by probable cause. We believe,

however, that the conduct of Cain and Gluesenkamp in illegally proceeding past the inspection station, together with the contradictory statements they made to the inspection officer regarding their cargo, provided probable cause supporting the limited intrusion by the law enforcement officers who subsequently arrived, looked in the van's windows, and saw the bundles which strongly suggested to them the presence of contraband.

Gluesenkamp contends that there were no exigent circumstances justifying a warrantless search since he and his companion had been detained and were not in a position to drive the van out of the jurisdiction. In short the argument is that Carroll does not apply where the automobile is no longer mobile.

This same argument was refuted by the United States Supreme Court in Chambers v. Maroney, 399 U.S. 42 (1970), where the

police, upon probable cause but without a warrant, searched the defendant's car parked outside the police station sometime after the defendant had been arrested. In holding that the police were not required to obtain a warrant, the Court stated:

> Arguably, because of the preference for a magistrate's judgment, only the immobilization of the car should be permitted until a search warrant is obtained; arguably only the "lesser" intrusion is permissible until the magistrate authorizes the "greater." But which is the "greater" and which the "lesser" intrusion is itself a debatable question and the answer may depend on a variety of circumstances. For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment.
>
> On the facts before us, the blue station wagon could have been searched on the spot when it was stopped since there was probable cause to search and it was a fleeting target for a search. The probable-cause factor still obtained

> at the station house and so did the mobility of the car unless the Fourth Amendment permits a warrantless seizure of the car and the denial of its use to anyone until a warrant is secured. In that event there is little to choose in terms of practical consequences between an immediate search without a warrant and the car's immobilization until a warrant is obtained. . . .

Id. at 51-52 (footnote omitted). See also Texas v. White, 423 U.S. 67 (1975); Flynn v. State, 374 So.2d 1041 (Fla. 1st DCA 1979).

The facts in this case are even more compelling. Glueserkamp, who owned the van, was not the one who was arrested for failing to stop at the inspection station since he was not the one driving at the time. Since he had the keys, he could have attempted to drive away at any time. There is no question that if he had, the police would have had the authority to stop him and search the van without a warrant. We

see no reason why the police should be required to wait until an attempt is made to move a vehicle before they are allowed to search it.

The reason for requiring certain vehicles to stop at the inspection stations is to allow the inspectors a little time in which to decide if there is probable cause for searching. Once a determination is made, a search should either be made or the driver should be allowed to continue. The fourth amendment prohibits unreasonable seizures. Cf., Seuss v. State, 370 So.2d 1203 (Fla. 1st DCA 1979); Miller v. State, 368 So.2d 943 (Fla. 1st DCA 1979). If the inspector is unsure of whether sufficient probable cause exists, he may detain the vehicle and seek assistance as was done in this case.

The seizure in this case was not unreasonable. Although close to two hours had passed from the time the vehicle was

stopped to the time it was searched, there was no evidence of undue delay. Most of the time was spent in contacting and waiting for a deputy sheriff and an assistant state attorney, men who were more qualified to decide if sufficient probable cause existed. They conducted the search soon after they determined probable cause existed. Since neither the search nor the seizure were unreasonable, Gluesenkamp's fourth amendment rights were not violated.

The judgments of conviction are affirmed.

It is so ordered.

SUNDBERG, C. J., ADKINS, OVERTON, ENGLAND and McDONALD, JJ., Concur ALDERMAN, J., Concurs specially with an opinion

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

ALDERMAN, J., concurring specially.

Although I concur with the majority opinion construing and upholding the constitutionality of section 570.15, Florida Statutes (1977), and defining trucks to include a certain type of van, I note that an inspector will not be able generally to discern from the outside appearance of a van passing on the highway whether it falls within the definition of truck and, consequently, is required to stop for inspection, or whether the van is excluded from the provisions of section 570.15 because it is a noncargo, passenger carrying van. Therefore, when a van passes an inspection station without stopping, the inspector has a right to pursue and to stop the van and to determine by looking inside

whether it is a passenger van or a cargo van. If it is determined that the van is a cargo van, the inspector can request that it be opened for inspection. If, while looking into the van, the inspector sees contraband in plain view, he then has probable cause to seize the contraband even if the van is a passenger van and not a truck as defined by section 570.15.

An Appeal from the Circuit Court in and for

Hamilton County,

John W. Peach, Judge - Case No. 78-18

William R. Slaughter, II of Slaughter and Slaughter, Live Oak, Florida; and James K. Jenkins, Atlanta, Georgia,

for Gluesenkamp, Appellant

Jim Smith, Attorney General, and Raymond L. Marky, Assistant Attorney General, Tallahassee, Florida,

for Appellee

An Appeal from the Circuit Court in and for Hamilton County,

John W. Peach, Judge - Case No. 78-85-CF

Larry G. Turner of Turner and Morris, Gainesville, Florida,

for Massengale and Kring, Appellants

Jim Smith, Attorney General, and Carolyn M. Snurkowski, Assistant Attorney General, Tallahassee, Florida,

for Appellee

An Appeal from the Circuit Court in and for

Hamilton County,

John W. Peach, Judge - Case Nos. 78-65 & 78-66

David Roth of Cone, Owen, Wagner, Nugent, Johnson, Hazouri and Roth, West Palm Beach, Florida,

for Mouw and Hartwing, Appellants

Jim Smith, Attorney General, and Carolyn M. Snurkowski, Assistant Attorney General, Tallahassee, Florida,

for Appellee

APPENDIX B

SUPREME COURT OF FLORIDA

WEDNESDAY, JANUARY 14, 1981

DANIEL W. GLUESENKAMP, Appellant, v. STATE OF FLORIDA, Appellee.	*	CASE NO. 57,124 Circuit Court No. 78-18 (Hamilton)
HUBERT DWIGHT MASSENGALE, et al., Appellants, v. STATE OF FLORIDA, Appellee.	*	CASE NO. 56,928 Circuit Court No. 78-85-CF (Hamilton)
JOSEPH FRANCIS MOUW, et al., v. STATE OF FLORIDA, Appellee.	*	CASE NO. 57,131 Circuit Court Nos. 78-65 & 78-66 (Hamilton) CONSOLIDATED CASES

Upon consideration of the Motions for Rehearing filed in the above styled causes by the attorneys for Appellants.

IT IS ORDERED that said Motions be and the same are hereby denied.

BOYD, OVERTON, ENGLAND, ALDERMAN and McDONALD, JJ., concur
SUNDBERG, C.J. and ADKINS, J., dissent

A True Copy

TEST:

Sid J. White

Clerk, Supreme Court

by:

Deputy Clerk

TC
cc: Hon. Alice Jones, Clerk
Hon. John W. Peach Judge

David Roth, Esquire
Larry G. Turner, Esq.
James K Jenkins, Esq.

William R. Slaughter, II, Esquire
Raymond L. Marky,Esq.
Carolyn Snurkowski, Esq.

APPENDIX C

IN THE SUPREME COURT OF FLORIDA

TUESDAY, JANUARY 27, 1981

DANIEL W. GLUESENKAMP,**

Appellant, **

**

v. **

** CASE NO. 57,124

STATE OF FLORIDA, **

Appellee. **

Appellant's Motion to Stay Issuance of Mandate is hereby denied.

A True Copy

TEST:
Sid J. White
Clerk, Supreme Court

C
cc:
James K Jenkins, Esq.
William R. Slaughter, II, Esq. of Slaughter & Slaughter
Raymond L. Marky, Esq.

APPENDIX D

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR HAMILTON COUNTY.

CASE NO. 78-18

STATE OF FLORIDA,

vs.

DAN W. GLUESENKAMP
Defendant

O R D E R

This cause coming on to be heard upon the Defendant's Motion to Dismiss; and the Court being otherwise fully advised in the premises, the Court finds:

(1)

That Section 570.15 of the Florida Statues is constitutional, and that said Statute does not, generally or as applied

to the facts of this case, deprive the Defendant of due process, or equal protection of the laws.

THEREFORE, it is after due consideration

ORDERED AND ADJUDGED that the Motion to Dismiss be, and the same is hereby denied.

DONE AND ORDERED in Chambers in Perry, Florida, this 17th day of July, A.D. 1978.

/s/_____

CIRCUIT JUDGE

Original: Clerk

Copies: Mr. Slaughter
Mr. Rudser

FILED 7-20-78

By/s/_____

APPENDIX E

IN THE CIRCUIT COURT,
HAMILTON COUNTY, FLA.
FALL TERM 1978
CASE NO. 78-18

STATE OF FLORIDA, Count I

vs.

DAN W. GLUESENKAMP
Defendant

JUDGMENT AND SENTENCE

The Defendant Dan W. Gluesenkamp being personally before this Court, represented by William R. Slaughter, II, his attorney of record,

having

entered a plea of Nolo Contendere to the crime of

Possession +100 Lbs. Cannabis to Sell

and the Court having inquired and given the Defendant an opportunity to be heard and show cause why he should not be adjudged guilty and sentenced as provided by law, including an opportunity to offer matters in mitigation of sentence, and no cause being shown, it is thereupon:

Ordered that the Defendant Dan W. Gluesenkamp is hereby adjudicated guilty of the

crime of Possession +100 Lbs Cannabis to Sell. It is the sentence of the law that said Defendant be committed to the custody of the Department of Offender Rehabilitation of the State of Florida, to be imprisoned at hard labor for the term of Five (5) Years. After serving ** in the institution in the State Correctional System to which said Department may cause you to be confined. [The Court recommends that you be confined at_____type institution.]

It is further ordered that you shall be allowed 1 Day credit for such time as you have been incarcerated prior to the imposition of this sentence for this offense.

It is further ordered that the Sheriff of Hamilton County, Florida, is hereby ordered and directed to deliver said Defendant to the Department of Offender Rehabilitation together with a copy of this Judgment and Sentence. It is further ordered and adjudged that said Defendant shall pay the sum of One Dollar ($1.00) pursuant to Section 943.24 Florida Statutes.

The Defendant in Open Court was advised of his right to appeal from this Judgment and Sentence within thirty days from this date and the Defendant's entitlement to the assistance of counsel in taking this appeal [illegible] Defendant was entitled to an attorney at the expense of the State.

**Eighteen (18) months and paying a fine of $5,000.00, Defendant to be released on Probation for remainder of Sentence.

The following are the fingerprints of the above-named Defendant.

DAN W GLUESENKAMP

(FINGERPRINTS)

DONE AND ORDERED IN Open Court at Jasper, Hamilton County, Florida this 12th day of October, A.D. 1978.

I HEREBY CERTIFY that the above and foregoing fingerprints on this Judgement and Sentence are the fingerprints of the Defendant Dan W. Gluesenkamp and that they were placed thereon by said Defendant in my presence in Open Court this date.

/s/
JUDGE

APPENDIX F

The Fourth Amendment to the United States Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the United States Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 570.15
Florida Statutes (1977)

Access to places of business and vehicles

(1)(a) The commissioner, assistant commissioner, directors, counsel, experts, chemists, agents, inspectors, road-guard inspection special officers, and other employees and officers of the department shall have full access at all reasonable hours to all:

1. Places of business;
2. Factories;
3. Farm buildings;
4. Carriages;
5. Railroad cars;
6. Trucks;
7. Motor vehicles, other than private passenger automobiles with no trailer in tow, or any vehicle bearing an RV license tag;
8. Truck and motor vehicle trailers;
9. Vessels; and
10. All records pertaining thereto;

used in the production, manufacture, storage, sale, or transportation within the state of any food product; any agricultural, horticultural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.

(b) If such access be refused by the owner, agent, or manager of such premises or by the driver of such aforesaid vehicle, the inspector or roadguard inspection special officer may apply for and may execute a search warrant, which shall be obtained as provided by law for the obtaining of search warrants in other cases, or may conduct a search of any of the aforesaid vehicles without a warrant pursuant to s.933.19.

(c) Such departmental officers, employees, and road-guard inspection special officers may examine and open any package or container of any kind containing or believed to contain any article or product which may be transported, manufactured, sold, or exposed for sale in violation of the provisions of this chapter, the rules of the department or the laws which the department enforces and may inspect the contents thereof and take therefrom samples for analysis.

(2) It shall be unlawful for any truck or any truck or motor vehicle trailer to pass any official road guard inspection station without first stopping for inspection. A violation of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Every law enforcement officer is authorized to assist employees of the department listed in subsection (1) in the enforcement of subsection (2). Such officer is authorized to stop and detain any vehicle and its driver who has failed to comply with subsection (2) until an employee of the department arrives to conduct the inspection required by law. Such law enforcement officer or a road guard inspection special officer may require the driver to return with his vehicle to the road guard inspection station where the driver failed to stop the vehicle for inspection.

(4) No civil or criminal liability shall be imposed upon any person who is authorized to enforce or assist in enforcement of the provisions of this section and who is lawfully engaged in such activity.
Amended by Laws 1975, c. 75-215, § 1, eff. July 1, 1975; Laws 1978, c. 78-180, § 1, eff. June 8, 1978; Laws 1979, c. 79-371, § 1, eff. July 3, 1979.

Florida Statutes:

320.06 Registration; revalidation stickers; license plates transferable; transfer fee; replacement plates

(1) Upon the filing of such application, the department shall assign to such motor vehicle, trailer, or semitrailer a registration license number and issue and deliver to the owner a certificate of registration and one registration license plate for each vehicle so registered.

(a) Registration license plates shall be issued for three-year periods beginning July 1, 1974, and each consecutive third year thereafter. During the two interim years, the department shall issue annual revalidation stickers for attachment to registration license plates.

(b) Beginning July 1, 1974 and thereafter, the registration license plates and certificates of registration shall be issued to and remain in the name of the owner of each vehicle registered and may be transferred by the owner from the vehicle for which the registration license plate was issued to a comparable vehicle the owner may acquire, subject to procedures set forth in subsection (2).

(2) Before an owner of a motor vehicle, trailer, or semitrailer shall sell, trade, transfer, or otherwise dispose of a motor vehicle, trailer, or semitrailer, the registration license plate thereon shall be removed, retained or destroyed by the owner, or transferred to a replacement motor vehicle, trailer, or semitrailer. No registration license plate shall be removed from any motor vehicle, trailer, or semi-

trailer to which it was issued and temporarily or permanently attached to any new or used replacement or substitute vehicle during any part of any unexpired registration year without first filing an application for transfer of such registration license plate and paying the transfer fee of $4.50 to the department.

(a) No registration license plate shall be transferable from a vehicle designated by any one subsection of § 320.08 to another vehicle within the designation of any other subsection of § 320.08 or § 320.081. Registration license plates for vehicles designated in § 320.081 shall be transferable only to replacement vehicles within that designation. No registration plates which are identified by letter series "R," "Q," "E," "S," "P," "GW," "K," "MF," "MI," "MT," "X," or "C," designated in § 320.08 shall be transferred except to a replacement vehicle which falls within the requirements under which such registration license plate was originally issued.

(b) A surviving spouse of a registered owner of any motor vehicle may, subject to approval of the county judge's court or a probate court and upon payment of a transfer fee of $4.50, request a registration certificate and transfer of registration license plate to his or her name for the remainder of a yearly registration period.

(c) It is unlawful for any person, firm, organization, or corporation authorized to make application for transfer of registration to fail to forward or cause to be forwarded to the department such application before transferring a registraiton license plate from any motor vehicle, trailer, or semitrailer to any other

vehicle owned by the same person, firm, organization, or corporation. Any person violating the provisions of this section shall be subject to the penalties provided in § 320.57.

(d) If a new or used replacement motor vehicle, trailer, or semitrailer is of the same weight or length classification as the originally owned motor vehicle, trailer, or semitrailer, classified in the same subsection of §§ 320.08 and 320.081, and currently licensed, no additional tax other than the transfer fee of $4.50, accompanied by an application for transfer on a form supplied by the department, shall be required to transfer a registration license plate to a comparable replacement vehicle for the duration of a current registration period and to issue a new certificate of registration.

(e) If the new or used replacement motor vehicle, trailer, or semitrailer is of a greater weight or length than the vehicle to be replaced and is classified in §§ 320.08 and 320.081 as requiring a registration license tax greater than for the original vehicle to be replaced, then the original license plate shall be surrendered in exchange for a plate of the appropriate weight series, and an amount representing the difference in the tax required shall be paid for the remaining months of the registration period, provided such remaining portion exceeds one month. Such payment shall be in addition to the transfer fee as authorized in this section. The minimum charge for issuance of license plates, provided in § 320.14, shall not apply to exchange of license plates under this section.

(f) If the new or used replacement motor vehicle, trailer, or semitrailer is of a lesser weight or length classification than the motor vehicle, trailer, or semitrailer designated in § 320.08 or § 320.081, to be replaced during the current registration period, no tax previously paid for the originally issued registration license plate and certificate of registration shall be refunded, but a transfer fee of $4.50 shall be paid with the application for transfer of the registration license plate and new certificate of registration, and the original license plate shall be surrendered for a plate of the appropriate weight series.

(3) The registration certificate or an official copy thereof, or a true copy of a rental or lease agreement issued for a motor vehicle, trailer, or semitrailer or issued for a replacement vehicle in the same registration period, shall, at all times while the vehicle is being used or operated upon the highways or streets of Florida, be in possession of the operator thereof or carried in the vehicle for which issued, and shall be exhibited upon demand of any authorized law enforcement officer or any agent of the department. No person charged with violating this subsection shall be convicted or fined if the operator produces in court a copy of such registration certificate valid at the time of his or her arrest.

(4) Registration license plates shall be of metal specially treated with a retroreflective material as specified by the department. Such registration license plate is designed to increase nighttime visibility and legibility and shall be at least six inches wide and not less than twelve

inches in length, and shall show the last two digits of the registration year of issue at the upper left corner of the registration license plates; and for each of the two subsequent years, a revalidation sticker issued annually shall be attached to the upper right corner of the license plate. The registration license plate shall be imprinted with numerals to identify the county wherein the plate is issued and with letters to identify "series" as described in § 320.08, followed by bold numerals or letters or combinations thereof to identify the registration license plate numer. The license plate shall also be imprinted with the three words, "Florida Sunshine State."

(5)(a) Revalidation stickers shall be issued in lieu of metal registration license plates for the two successive registration periods following the annual registration period in which metal registration license plates are issued. Owners of motor vehicles, trailers, or semitrailers submitting required tax and fees and requesting registration license plates for motor vehicles, trailers, and semitrailers not previously registered, when metal registration plates were issued, shall be issued a registration license plate with a current valid revalidation sticker attached.

(b) Revalidation stickers shall be metal tabs or material that will adhere to metal registration license plates, and shall be imprinted with the last two digits of the registration year for which issued and shall be serially numered.

(6) An additional sum of 5 cents shall be added and collected on each motor vehicle license plate sold in this state in

order to provide that all Florida license plates shall be treated with retroreflective material. Beginning July 1, 1971, this additional sum shall be increased to 25 cents in order to provide that all Florida license plates shall be fully reflectorized. Beginning July 1, 1974 and annually thereafter, this sum shall be increased to 50 cents to provide for reflectorization of metal license plates and revalidation stickers, whether issued individually or as a single unit.

(7) Any owner of a registered motor vehicle, trailer, or semitrailer, upon filing in the office of the department an application accompanied by a fee of $2, may obtain:

(a) A replacement registration license plate upon surrender of the old plate for cancellation; or

(b) A replacement registration license plate with current applicable validation stickers attached, plus a certificate of registration, upon surrender of the old license plate and validation stickers required to be attached for the current validation period, plus the certificate of registration or official copy thereof.

(8) In order to enable the division of corrections of the department of health and rehabilitative services to manufacture the three year license plates authorized herein, the department of highway safety and motor vehicles is hereby authorized to prepay to the division of corrections the amount required to purchase the materials needed for the manufacture of reflectorized license plates. The amount prepaid shall not exceed the amount of the appropriation

made to the department of highway safety and motor vehicles, but shall be sufficient to enable the division of corrections to meet the responsibilities required by the legislature through enactment of this legislation.

Section 933.19
Florida Statutes (1977)

Searches and seizures of vehicles carrying contraband or illegal intoxicating liquors or merchandise

(1) The provisions of the opinion rendered by the supreme court of the United States on March 2, 1925, in that certain cause wherein George Carroll and John Kiro were plaintiffs in error and the United States was defendant in error, reported in 267 United States Reports, beginning at page 132, relative to searches and seizures of vehicles carrying contraband or illegal intoxicating liquors or merchandise, and construing the fourth amendment to the constitution of the United States, are adopted as the statute law of the state applicable to searches and seizures under § 12, Art. I of the state constitution, when searches and seizures shall be made by any duly authorized and constituted bonded officer of this state exercising police authority in the enforcement of any law of the state relative to the unlawful transportation or hauling of intoxicating liquors or other contraband by the laws of the state.

(2) The same rules as to admissibility of evidence and liability of officers for illegal or unreasonable searches and seizures as wer laid down in said case by the supreme court of te United States shall apply to and govern the rights, duties and liabilities of officers and citizens in the state under the like provisions of the Florida constitution relating to searches and seizures.

(3) All points of law decided in the aforesaid case relating to the construction or interpretation of the provisions of the constitution of the United States relative

to searches and seizures of vehicles carrying contraband or illegal intoxicating liquors or merchandise shall be taken to be the law of the state enacted by the legislature to govern and control such subject.

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing Appendix to Petition for Writ of Certiorari to the Florida Supreme Court upon the Florida State's Attorney, Jim Smith, The Capitol, Tallahassee, Florida.

This day of March, 1981.

JAMES K. JENKINS